



Award No. 5564
Docket No. 5438
2-PC-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE PENN CENTRAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement Machinist J. W. Ferguson is being improperly compensated for his services beginning August 27, 1963, and continuing so long as he is used to perform service outside his seniority district.

2. That accordingly the Carrier be ordered to additionally compensate Machinist J. W. Ferguson, eight (8) hours at the Grade E rate of pay for each day he is required to perform work outside his seniority district.

3. In the event the position is filled by other employes under the provisions of Rule 2-A-1, 2-A-5 or 3-D-4, then the claim shall be for the incumbent of the Fuel Truck position at Pitcairn Enginehouse.

EMPLOYEES' STATEMENT OF FACTS: J. W. Ferguson, hereinafter referred to as the Claimant, is regularly employed and holds a bulletined assignment at the Pennsylvania Railroad Company, hereinafter referred to as the Carrier, at the Carrier's Pitcairn Enginehouse, Pitcairn, Pa.

Claimant is shown on the Machinist Craft roster with a standing of B-9 and a seniority date of October 9, 1922.

On August 2, 1963, Advertisement Bulletin No. 12 was posted in the Pitcairn Seniority District, showing a Machinist Position on the Fuel Truck, to report on and off at the Pitcairn Enginehouse.

Claimant made application for the position shown on Bulletin No. 12, in accordance with his seniority on the Pitcairn Enginehouse Seniority District roster, and on August 15, 1963, Assignment Bulletin No. 12 was posted, advising that the Claimant had been awarded the Fuel Truck position.

tion of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to them. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier asserts that the operation about which the Employees here complain is not in violation of any rules of the Schedule Agreement; it is in accordance with a long-standing practice of permitting Machinists to work outside their seniority districts, and in any event the Claimant did not lose any time as a result of the alleged improper assignment and, therefore, he is not entitled to the penalty claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The issue to be decided is whether the claimant is entitled to the penalty compensation claimed on account of being required to perform service outside his seniority district.

It is a fact that the carrier approached the organization in order to get them to agree to transfer a man to Pitcairn as contemplated in Rule 3-C-3. When the employes declined to go along with this request, the carrier transferred the fuel truck without an employe.

Carrier's position is that none of the rules cited by the employes was violated. The employes, on the other hand, state that the carrier did violate the applicable agreement when they used the claimant outside his home seniority district.

In light of the conflicting assertions, we find that the parties shall negotiate this matter and reach an understanding governing the handling of this situation to the satisfaction of both parties.

In regard to damages the record is clear that claimant did not lose any time from work, and thus suffered no pecuniary loss as a result of carrier's

action. This Board is not empowered to use sanctions or penalties not authorized or permitted by the controlling agreement; therefore, inasmuch as claimant did not suffer any pecuniary loss we must deny the claim in regard to damages.

AWARD

Claim disposed of in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1968.